

## **REMARKS**

### **Overview**

The claims in the case are 1, 3-9, and 11-20. The independent claims 1 and 12 are currently amended, and claim 11 is amended to correct dependency. Claims 2 and 10 have been cancelled. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

### **Drawing Objection**

The drawings were objected to for failure to label the features of symbols in Figure 1 as described in the Specification. Corrected Figure 1 so labeled is enclosed.

### **Claim Objection**

The objection to claim 2 is merely reciting identical limits of claim 1 has been rendered moot by cancellation thereof. Claim 10 has also been cancelled.

### **Claim Rejections Under 35 U.S.C. § 101**

Claims 1-20 were rejected under 35 U.S.C. § 101 as non-statutory, citing MPEP 2106.01. Applicant has amended both of the independent claims 1 and 12 to clearly encompass statutory subject matter. See *in re Bilski*, 88 U.S.P.Q.2d 1385 (Fed. Cir. 2008).

### **Claim Rejections Under 35 U.S.C. § 102**

Claims 1-20 were rejected as anticipated within the meaning of 35 U.S.C. § 102(a) by iTunes 4.0. The rejection is traversed to the extent that the Examiner just to rely upon that with regard to currently amended claims 1 and 12 and their corresponding dependent claims.

The main difference between the iTunes prior art and the currently amended claims 1 and 12 of this application is that in the prior art the user is provided with the opportunity to purchase a song electronically and, once purchased, that item becomes part of the user's collection of items. The user is also provided with the ability to request that the prior art system can generate a playlist of items based on certain preferences. However in the prior art the playlist items can only be selected from those items which are already present in the user's collection at that time. Thus, in the prior art, although there may be other sources for items which are more suited to the user's preferences for the playlist, it is not possible for those items from other sources to be included in the playlist which is being generated as only those which are included in the users collection at that time can be selected. This therefore means that the playlist may not be the optimum one, or may not be as up to date as it could be. This represents iTunes.

In the current amended invention of claims 1 and 12, the applicant has appreciated that the above represents a problem and provides an inferior system to the user. There is now set out in the independent claims the key features that are required to be provided in order to allow the playlist to be generated from a wider range of sources and hence overcome the problems of the prior art. Principally the playlist items can be selected from the collection of items of the user or from any other source, with any item selected from one of the other sources referred to as a new item. The new item is not available from the user's collection of items but may be selected in accordance with the invention as it meets the user's preferences better than those available in the user's collection.

Furthermore, the selected new item is not required to be part of the user's collection before it can be selected and can therefore be accessed directly from the other source when it is

required to be played back as part of the playlist which has been generated. These features are emphasized in the amended claims and missing from the art.

Reconsideration and allowance of the claims is solicited.

## **Conclusion**

This is a request to extend the period for filing a response in the above-identified application for three months from September 26, 2008 to December 26, 2008. Applicant is a large entity; therefore, please charge Deposit Account number 26-0084 in the amount of \$1,110.00 to cover the cost of the three month extension. Any deficiency or overpayment should be charged or credited to Deposit Account 26-0084.

No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



EDMUND J. SEASE, Reg. No. 24,741  
McKEE, VOORHEES & SEASE, P.L.C.  
801 Grand Avenue, Suite 3200  
Des Moines, Iowa 50309-2721  
Phone No: (515) 288-3667  
Fax No: (515) 288-1338  
**CUSTOMER NO: 22885**

Attorneys of Record

- bjh -

Enclosure: Replacement Drawing